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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,941	04/30/2001	James F. Hemerick	6530.0278	8636

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 10/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

**Office Action Summary**

Application No.

09/843,941

Applicant(s)

Hemerick et al.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_                      6) ☐ Other:

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winston et al. (5,306,294). Winston et al. show outer tubular structure 20, inner tubular structure 12, stent accommodating area (just distal to flange 14) and external tubular structure contact area (flange 14) which obviously slides against the interior surface of the outer tubular structure since they are shown as contacting one another in figures 1, 2 and 4. As to claim 2, using Pellethane as the material for the inner tubular structure would have been obvious since it is well known as a desirable material for this use as indicated on page 2, lines 8-10 of applicant's specification. As to claims 3-4, note the plurality of external tubular structure contact areas 14 in figure 4 of Winston et al. As to claim 5, making the Winston et al. inner tubular structure of increasing durometer from the distal end to the proximal end, in order to enable it to flex more easily at its distal end as it traverses tortuous blood vessels would have been obvious since it is well known to so construct catheters and other


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devices inserted within blood vessels for this reason. As to claim 35, retracting the Winston et al. stent back into the outer tubular structure and then repositioning the stent delivery system when it is determined that the stent is not initially properly positioned would have been obvious since it is well known in this art to so retract and reposition stents for this reason.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

mht  
October 8, 2002  
FAX (703) 305-3590



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731